IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 4122 of 2006(N)

PETITIONER:

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1. JINO SEBASTIAN, LECTURER IN PHYSICAL EDUCATION, PAYYANUR COLLEGE, PAYYANUR, KANNUR DISTRICT.

2. PRAJITHA.P., LECTURER IN MALAYALAM, PAYYANUR COLLEGE, PAYYANUR, KANNUR DISTRICT.

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.K.VINODKUMAR
SRI.P.K.MANOJKUMAR

RESPONDENTS:

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1. KANNUR UNIVERSITY, REPRESENTED BY ITS REGISTRAR, MANGATTUPARAMBA, KANNUR UNIVERSITY CAMPUS P.O.KANNUR.

2. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY FOR HIGHER EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DIRECTOR OF COLLEGIATE EDUCATION, GOVERNMENT OF KERALA, VIKHAS BHAVAN, THIRUVANANTHAPURAM.

4. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, NORTH ZONE, KOZHIKODE.

5. THE MANAGER, PAYYANUR EDUCATIONAL SOCIETY, REGISTERED NO.11/64, P.O.PAYYANUR, PIN-670 307.

6. THE PRINCIPAL, PAYYANUR COLLEGE, PAYYANUR, KANNUR DISTRICT.

R1 BY ADV. SRI. K.JAJU BABU, SC, KANNUR UNIVERSITY

R5 SRI.M.SASINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENEIX

EXT.P1-TRUE COPY OF THE APPOINTMENT ORDER DATED 19.3.2005 ISSUED BY THE PRESIDENT PAYYANNUR EDUCATIONAL SOCIETY, PAYYANNUR TO FIRST PETITIONER's

EXT.P2-TRUE COPY OF THE APPOINTMENT ORDER DATED 19.3.2005 ISSUED BY THE PRESIDENT, DO. TO R2

EXT.P3-TRUE COPY OF ORDER OF APPROVAL DATED 14.11.2005 ISSUED BY KANNUR UNIVERSITY TO FIRST PETITIONER's
EXT.P4-TRUE COPY OF ORDER OF APPROVAL DT.4.10.2005 ISSUED BY DO. TO SECOND PETITIONER's

EXT.P5-TRUE COPY OF SALARY BILL FOR SEPTEMBER - NOVEMBER 2005 ISSUED BY THE PRINCIPAL, PAYYANNUR COLLEGE, PAYYANNUR.

EXT.P6-TRUE COPY OF COMMUNICATION DATED 5.1.2006 ISSUED BY DEPUTY DIRECTOR OF EDUCATION, KOZHIKODE TO DO.

EXT.P7-TRUE COPY OF STATEMENT OF WORKLOAD FOR THE YEAR 2004-05 BASED ON THE STUDENTS STRENGTH AS ON 1.11.2004 ISSUED BY THE PRINCIPAL, PAYYANNUR COLLEGE, PAYYANNUR.

EXT.P8-TRUE COPY OF STATEMENT OF DO. DO.

EXT.P8(A)-TRUE COPY OF STATEMENT OF STAFF STRENGTH DATED 16.10.2003 ISSUED BY PRINCIPAL, PAYYANNUR COLLEGE, PAYYANNUR.

EXT.P9-TRUE COPY OF JUDGMENT DATED 3.1.2006 IN WPC 31575/2005PASSED BY THIS COURT

EXT.P10-TRUE COPY OF JUDGMENT DATED 7.10.2004 IN WPC 24085/2004 OF THIS COURT.

RESPONDENTS' EXTS:

EXT.R5(A)-TRUE COPY OF THE COMMUNICATION DATED 21.7.2004 SUBMITTED BY THE DEPUTY DIRECTOR OF EDUCATION TO THE DIRECTOR OF COLLEGIATE EDUCATION.

EXT.R5(B)-TRUE COPY OF ORDER DATED 28.2.2005 ISSUED BY GOVERNMENT.

// TRUE COPY //

T.R. Ramachandran Nair, J.

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W.P.(C).NO.4122 of 2006-N

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Dated this the 7th day of March, 2007

JUDGMENT

The petitioners herein are working as Lecturers in Physical Education and Malayalam Departments in the 5th respondent college. They were appointed by the management as per Exts.P1 and P2 orders of appointment. The first respondent University has approved their appointment as per Exts.P3 and P4 orders with effect from 21.3.2005. The appointments have been made in the permanent vacancies of the post of Lecturers as per the workload prescribed by the University.

2. When the salary bills of the petitioners were forwarded for approval by the Deputy Director of Collegiate Education, the same were returned by him as per Ext.P6 communication. Therefore, they could not draw the salary even though their appointment stands approved by the University. The petitioners therefore pray that a direction may be issued to the respondents to pay their salary including arrears after quashing Ext.P6 communication.

3. Respondents 3 and 5 have filed separate counter affidavits. The stand taken in the counter affidavit filed by the third respondent is that after

the Pre-degree courses have been de-linked from the colleges, the Government has issued an order dated 24.4.1997 followed by a circular dated 23.6.2000 imposing a ban on creation of posts and filling up of vacancies. It is also stated that prior permission of the Government is required before making appointments by the concerned managements. It is also stated that Kannur University Act has been amended and the amendment has come into force from 6.1.2005 and as a result of the amended provisions, appointment can be made only against posts sanctioned by the Government or other officers as authorised by Government.

4. The fifth respondent in their counter affidavit, relies upon Ext.R5 (a), a communication issued by the Deputy Director of Education to the Director of Collegiate Education which provides for the details of the workload in respect of the various departments of the college in question. Going by the terms of Ext.R5(a), as far as Department of Malayalam is concerned, the number of teachers permissible is five and there is one vacancy and as far as the Department of Physical Education is concerned, the number of teachers permissible is two and there is one existing vacancy. Therefore, it is averred that the selection process initiated by the management to fill up those vacancies is perfectly in order. It is also pointed out that pursuant to the application submitted by the college for sanctioning and deputation of a representative to the selection committee,

as per Ext.R5(b) the Government deputed one Additional Secretary to Government as the Government representative for the selection of teaching staff against sanctioned posts in the college during the academic year 2004-05, in relaxation of the circular dated 29.12.2001.

5. The appointments have been made as permitted by the workload of the college which is evident from the communication of the Deputy Director of Education, marked as Ext.R5(a). The University has already granted approval for the appointments in question. As held by the Division Bench in the decision reported in **Cherian Mathew v. Principal, S.B. College, Changanassery** (1998 (2) KLT 144) when the appointments have been made in conformity with the workload assessed by the University and if the appointments have been approved by the concerned University, the salary of those teachers whose appointments have been approved, should be disbursed by the Government through the Director of Collegiate Education. It is also clear from the above judgment that this court declared that in such circumstances, the objections raised by the Deputy Director to the salary bill without raising any objection regarding the approval of appointment granted by the University, is not legally sustainable. The procedure that should have been adopted by the Deputy Director has also been pointed out in the judgment, in that if the Deputy Director entertains any doubt regarding the propriety of the appointment, he should point out it to the University and seek for a re-examination of the approval already granted by

the University.

6. Going by the counter affidavit filed by the third respondent in this case, respondents 3 and 4 have not taken up the matter with the University so far or raised any objection regarding the approval of the appointment. Therefore, apparently it is a case where they have not chosen to follow the method by which they could have objected to the approval if valid objections persist.

7. A similar question was considered by this court as per Ext.P9 judgment in Writ Petition No.31575/2005. This court after elaborately considering the statutory provisions concerned, held that as the appointment stands approved and as there is no valid objection pending before the University with regard to the approval, there is no justification in denying the salary of the teachers whose appointments have been approved.

8. In the light of the principles stated by this court in those judgments, I find that the objection raised by the 4th respondent in Ext.P6 cannot be sustained.

9. But still, as held by this court in the decision reported in 1998(2) KLT 144, if respondents 3 and 4 have got any objection regarding the approval granted by the University, they can take up the matter with the University within a period of three weeks from the date of receipt of a copy of this judgment and the first respondent University is directed to consider the same and communicate the result of the decision to respondents 3 and 4

within a period of one month from the date of receipt of the objections, if any, from respondents 3 and 4. Depending upon the decision of the University and on the basis of the orders of approval of appointment, the salary of the petitioners including arrears shall be disbursed to them within a period of two months from the date of communication of the decision by the University to respondents 3 and 4. If no such objections are forthcoming from respondents 3 and 4 within the period of three weeks allowed as above, then the petitioners are entitled to get their salary disbursed with arrears, within a period of two months from the date of production of a copy of this judgment.

The writ petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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